

## SENATE BILL No. 455

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 33-4-3; IC 33-5-2; IC 33-10.1-2; IC 33-10.5-7; IC 33-11.6-4.

**Synopsis:** Small claims courts. Provides that the jurisdictional amount for small claims or city court actions includes attorney's fees. Reduces to \$3,000 the jurisdictional amount in small claims or city court actions not involving landlord-tenant disputes, and removes a provision that would have increased the jurisdictional amount to \$6,000 in 2005. Permits a pretrial hearing to determine whether a claim is frivolous. Prohibits the granting of a continuance solely on the basis that the party is not represented by an attorney. Requires the judge to file a brief memorandum documenting the reasons for the judgment.

**Effective:** July 1, 2004; July 1, 2005.

**Merritt**

January 12, 2004, read first time and referred to Committee on Judiciary.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## SENATE BILL No. 455

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 33-4-3-7, AS AMENDED BY P.L.167-2003,  
2       SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2005]: Sec. 7. The small claims docket has jurisdiction over  
4       the following:

5           (1) Civil actions in which the amount sought or value of the  
6           property sought to be recovered is not more than ~~six~~ **three**  
7           thousand dollars ~~(\$6,000)~~ **(\$3,000), including attorney's fees.**  
8           The plaintiff in a statement of claim or the defendant in a  
9           counterclaim may waive the excess of any claim that exceeds ~~six~~  
10          **three** thousand dollars ~~(\$6,000)~~ **(\$3,000), including attorney's**  
11          **fees**, in order to bring it within the jurisdiction of the small claims  
12          docket.

13          (2) Possessory actions between landlord and tenant in which the  
14          rent due at the time the action is filed does not exceed six  
15          thousand dollars (\$6,000).

16          (3) Emergency possessory actions between a landlord and tenant  
17          under IC 32-31-6.

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SECTION 2. IC 33-4-3-8 IS AMENDED TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2004]: Sec. 8. (a) The exceptions provided in  
this section to formal practice and procedure apply to all cases on the  
small claims docket.

(b) A defendant is deemed to have complied with the statute and  
rule requiring the filing of an answer upon entering an appearance  
personally or by attorney. The appearance constitutes a general denial  
and preserves all defenses and compulsory counterclaims, which may  
then be presented at the trial of the cause.

(c) If, at the trial of the cause, the court determines:

(1) that the complaint is so vague or ambiguous that the defendant  
was unable to determine the nature of plaintiffs' claim; or

(2) that the plaintiff is surprised by a defense or compulsory  
counterclaim raised by the defendant that the plaintiff could not  
reasonably have anticipated;

the court shall grant a continuance.

**(d) A judge may grant a party a continuance before trial in  
accordance with the Indiana Rules for Small Claims. However, a  
party seeking a continuance solely because the party is not  
represented by an attorney has not shown good cause for a  
continuance.**

(e) The trial shall be conducted informally, with the sole objective  
of dispensing speedy justice between the parties according to the rules  
of substantive law. The trial is not bound by the statutes or rules  
governing practice, procedure, pleadings, or evidence except for  
provisions relating to privileged communications and offers of  
compromise.

**(f) Upon motion, a judge may conduct a pretrial hearing to  
determine whether a claim is frivolous. If the court finds that a  
claim is frivolous, the court may award attorney's fees to the  
opposing party.**

**(g) When a judge renders a judgment in a small claims action,  
the judge shall file a brief memorandum describing the basis for  
the judge's decision and any evidence relied on in reaching the  
decision.**

SECTION 3. IC 33-5-2-4, AS AMENDED BY P.L.167-2003,  
SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2005]: The small claims docket has jurisdiction over the  
following:

(1) Civil actions in which the amount sought or value of the  
property sought to be recovered is not more than ~~six~~ **three**  
thousand dollars (~~\$6,000~~) **(\$3,000), including attorney's fees.**

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The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds ~~six~~ **three** thousand dollars (~~\$6,000~~) (**\$3,000**), **including attorney's fees**, in order to bring it within the jurisdiction of the small claims docket.

(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed six thousand dollars (\$6,000).

(3) Emergency possessory actions between a landlord and tenant under IC 32-31-6.

SECTION 4. IC 33-5-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) The exceptions provided in this section to formal practice and procedure apply to all cases on the small claims docket.

(b) A defendant is deemed to have complied with the statute and rule requiring the filing of an answer upon entering an appearance personally or by attorney. The appearance constitutes a general denial and preserves all defenses and compulsory counterclaims, which may then be presented at the trial of the cause.

(c) If, at the trial of the cause, the court determines:

(1) that the complaint is so vague or ambiguous that the defendant was unable to determine the nature of plaintiffs' claim; or

(2) that the plaintiff is surprised by a defense or compulsory counterclaim raised by the defendant that the plaintiff could not reasonably have anticipated;

the court shall grant a continuance.

(d) **A judge may grant a party a continuance before trial in accordance with the Indiana Rules for Small Claims. However, a party seeking a continuance solely because the party is not represented by an attorney has not shown good cause for a continuance.**

(e) The trial shall be conducted informally, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law. The trial is not bound by the statutes or rules governing practice, procedure, pleadings, or evidence except for provisions relating to privileged communications and offers of compromise.

(f) **Upon motion, a judge may conduct a pretrial hearing to determine whether a claim is frivolous. If the court finds that a claim is frivolous, the court may award attorney's fees to the opposing party.**

(g) **When a judge renders a judgment in a small claims action,**

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1 **the judge shall file a brief memorandum describing the basis for**  
 2 **the judge's decision and any evidence relied upon in reaching the**  
 3 **decision.**

4 SECTION 5. IC 33-10.1-2-4 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. The city court of  
 6 each of the four (4) cities having the largest populations and the town  
 7 court of the town having the largest population in a county having a  
 8 population of more than four hundred thousand (400,000) but less than  
 9 seven hundred thousand (700,000) have concurrent civil jurisdiction  
 10 with the circuit court of the county where the amount in controversy  
 11 does not exceed three thousand dollars (\$3,000), **including attorney's**  
 12 **fees.** The court has jurisdiction in any action where the parties or the  
 13 subject matter are in the county in which the city or town is located.  
 14 However, the city or town court does not have jurisdiction in:

- 15 (1) actions for slander or libel;
- 16 (2) matters relating to decedents' estates, appointment of
- 17 guardians, and all related matters;
- 18 (3) dissolution of marriage actions; or
- 19 (4) injunction or mandate actions.

20 SECTION 6. IC 33-10.1-2-5 IS AMENDED TO READ AS  
 21 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) A city court in a  
 22 third class city that is not a county seat and to which section 4 of this  
 23 chapter does not apply has concurrent jurisdiction with the circuit court  
 24 in civil cases where the amount in controversy does not exceed three  
 25 thousand dollars (\$3,000), **including attorney's fees.** However, the  
 26 city court does not have jurisdiction in actions for slander, libel,  
 27 foreclosure of mortgages on real estate, where the title to real estate is  
 28 in issue, all matters relating to a decedent's estate, appointment of  
 29 guardians and all related matters, and actions in equity, nor does the  
 30 court have original jurisdiction where the principal defendant resides  
 31 within another city having a city court with a civil jurisdiction.  
 32 Judgments rendered in the city court, when a certified transcript is filed  
 33 with the clerk of the circuit court, have the same force as judgments  
 34 rendered in the circuit court.

35 **(b) A judge may grant a party a continuance in accordance with**  
 36 **the Indiana Rules of Trial Procedure. However, a party seeking a**  
 37 **continuance solely because the party is not represented by an**  
 38 **attorney has not shown good cause for a continuance.**

39 **(c) Upon motion, a judge may conduct a pretrial hearing to**  
 40 **determine whether a complaint filed in a civil action is frivolous. If**  
 41 **the court finds that the complaint is frivolous, the court may award**  
 42 **attorney's fees to the opposing party.**

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(d) When a judge renders a judgment in a civil action, the judge shall file a brief memorandum describing the basis for the judge's decision and any evidence relied on in reaching the decision.

SECTION 7. IC 33-10.5-7-1, AS AMENDED BY P.L.167-2003, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. Each judge of the county court shall maintain the following dockets:

(1) An offenses and violations docket.

(2) A small claims docket for the following:

(A) All cases where the amount sought or value of the property sought to be recovered is ~~six three~~ thousand dollars ~~(\$6,000)~~ **(\$3,000)** or less, **including attorney's fees**. The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of ~~his the~~ claim over ~~six three~~ thousand dollars ~~(\$6,000)~~ **(\$3,000)** to bring it within the jurisdiction of the small claims docket.

(B) All possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed six thousand dollars (\$6,000).

(C) Emergency possessory actions between a landlord and tenant under ~~IC 32-31-4~~. **IC 32-31-6**.

(3) A plenary docket for all other civil cases.

SECTION 8. IC 33-10.5-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. ~~Practice and Procedure~~. Except as otherwise provided in this article the practice and procedure in the county court shall be as provided by statute and Indiana rules of procedure as adopted by the supreme court of Indiana. However, in cases of the small claims docket there shall be the following exceptions:

(a) Defendants shall be deemed to have complied with the statute and rule requiring the filing of an answer upon entering their appearance personally or by attorney. The appearance shall be deemed a general denial and shall preserve all defenses and compulsory counterclaims which may then be presented at the trial of the cause.

(b) If, at the trial of the cause, the court determines that the complaint is so vague and ambiguous that the defendant was unable to determine the nature of plaintiffs' claim, or that the plaintiff is surprised by defense or compulsory counterclaim raised by the defendant that the plaintiff could not reasonably have anticipated, the court shall grant a continuance.

(c) **A judge may grant a party a continuance before trial in accordance with the Indiana Rules for Small Claims. However, a**

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1 party seeking a continuance solely because the party is not  
 2 represented by an attorney has not shown good cause for a  
 3 continuance.

4 (d) The trial shall be informal, with the sole objective of dispensing  
 5 speedy justice between the parties according to the rules of substantive  
 6 law, and shall not be bound by the statutory provisions or rules of  
 7 practice, procedure, pleadings or evidence except provisions relating  
 8 to privileged communications and offers of compromise.

9 (e) Upon motion, a judge may conduct a pretrial hearing to  
 10 determine whether a claim is frivolous. If the court finds that a  
 11 claim is frivolous, the court may award attorney's fees to the  
 12 opposing party.

13 (f) When a judge renders a judgment in a small claims action,  
 14 the judge shall file a brief memorandum describing the basis for  
 15 the judge's decision and any evidence relied on in reaching the  
 16 decision.

17 SECTION 9. IC 33-11.6-4-2, AS AMENDED BY P.L.167-2003,  
 18 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 19 JULY 1, 2005]: Sec. 2. The court shall have original and concurrent  
 20 jurisdiction with the circuit and superior courts in all civil cases  
 21 founded on contract or tort in which the debt or damage claimed does  
 22 not exceed ~~six~~ three thousand dollars (~~\$6,000~~), (**\$3,000**), ~~not~~ including  
 23 interest or attorney's fees.

24 SECTION 10. IC 33-11.6-4-8 IS AMENDED TO READ AS  
 25 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) ~~Trial~~. The trial  
 26 shall be informal, with the sole objective of dispensing speedy justice  
 27 between the parties according to the rules of substantive law, and shall  
 28 not be bound by the statutory provisions or rules of practice, procedure,  
 29 pleadings, or evidence, except such provisions relating to privileged  
 30 communications and offers of compromise.

31 (b) A judge may grant a party a continuance in accordance with  
 32 the Indiana Rules for Small Claims. However, a party seeking a  
 33 continuance solely because the party is not represented by an  
 34 attorney has not shown good cause for a continuance.

35 (c) Upon motion, a judge may conduct a pretrial hearing to  
 36 determine whether a claim is frivolous. If the court finds that a  
 37 claim is frivolous, the court may award attorney's fees to the  
 38 opposing party.

39 (d) When a judge renders a judgment in a small claims action,  
 40 the judge shall file a brief memorandum describing the basis for  
 41 the judge's decision and any evidence relied on in reaching the  
 42 decision.

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1 SECTION 11. [EFFECTIVE JULY 1, 2004] (a) Notwithstanding  
 2 IC 33-4-3-7, as amended by P.L.2-2002, SECTION 84, the three  
 3 thousand dollar (\$3,000) jurisdictional amount set forth in  
 4 IC 33-4-3-7(1) in small claims actions includes attorney's fees.

5 (b) This SECTION expires June 30, 2005.

6 SECTION 12. [EFFECTIVE JULY 1, 2004] (a) Notwithstanding  
 7 IC 33-5-2-4, as amended by P.L.2-2002, SECTION 85, the three  
 8 thousand dollar (\$3,000) jurisdictional amount set forth in  
 9 IC 33-5-2-4(a)(1) in small claims actions includes attorney's fees.

10 (b) This subsection applies to a county having a population of  
 11 more than three hundred thousand (300,000) but less than four  
 12 hundred thousand (400,000). Notwithstanding IC 33-5-2-4, as  
 13 amended by P.L.2-2002, SECTION 85, the jurisdictional amount  
 14 in small claims actions is three thousand dollars (\$3,000), including  
 15 attorney's fees, and not six thousand dollars (\$6,000) as set forth in  
 16 IC 33-5-2-4(b)(1).

17 (c) This SECTION expires June 30, 2005.

18 SECTION 13. [EFFECTIVE JULY 1, 2004] (a) Notwithstanding  
 19 IC 33-10.5-7-1, as amended by P.L.2-2002, SECTION 87, the three  
 20 thousand dollar (\$3,000) jurisdictional amount set forth in  
 21 IC 33-10.5-7-1(2) in small claims actions includes attorney's fees.

22 (b) Notwithstanding IC 33-10.5-7-1, as amended by P.L.2-2002,  
 23 SECTION 87, the cross-reference in IC 33-10.5-7-1(2)(C) to  
 24 emergency possessory actions between a landlord and tenant is  
 25 IC 32-31-6 and not IC 32-31-4.

26 (c) This SECTION expires June 30, 2005.

27 SECTION 14. [EFFECTIVE JULY 1, 2004] (a) Notwithstanding  
 28 IC 33-11.6-4-2, as amended by P.L.16-1995, SECTION 8, the  
 29 jurisdictional amount in small claims actions described in  
 30 IC 33-11.6-4-2 is three thousand dollars (\$3,000), including  
 31 attorney's fees, and not six thousand dollars (\$6,000), as set forth  
 32 in IC 33-11.6-4-2.

33 (b) This SECTION expires June 30, 2005.

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